

REMARKS/ARGUMENTS

Claims 1-22 are present in this application. Claims 6, 10, 11, 13 and 17 have been withdrawn from consideration. By this Amendment, claims 1, 14, 21 and 22 have been amended. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

At the outset, Applicant extends his appreciation to Examiner Garg for his courtesy in conducting the telephone interview with Applicant's representative. During the telephone interview, Applicant's representative referenced a passage on page 3 of the November 5, 2007 Office Action with regard to the user only compiling the user profile. Examiner Garg agreed that if the claims were amended to clarify this concept, pending further consideration of the references of record and an updated search, the claims may be distinguishable from the references of record. Examiner Garg additionally agreed that if such amendments were filed with a Request for Continued Examination (RCE), if a next action was not a Notice of Allowance, the next action would not be made final.

With reference to the Office Action, claims 1-5, 7-9, 12, 14-16 and 18-22 were rejected under 35 U.S.C. § 103(a) over U.S. Published Patent Application No. 2001/0014868 to Herz et al. in view of U.S. Published Patent Application No. 2002/0026363 to Dunaway, Jr. This rejection is respectfully traversed.

There are at least two important distinctions between the system defined according to the claimed invention and that disclosed in the Herz publication. First, the Herz system is focused entirely on pricing and promotion from a vendor's perspective. Herz repeatedly refers to pricing and promotion to achieve the ultimate goal of maximizing the vendor's profits. See, for example, the Abstract and paragraphs [0002], [0004], [0236] et seq., [0302] and others. Herz

describes methods that endeavor to “entice” shoppers to buy more products. See, for example, the Abstract and paragraph [0005]. In contrast, the system according to the claimed invention serves to benefit the consumer and identifies relevant products and services that most benefit the user (i.e., without regard to vendor profits).

Secondly, since the Herz system solely serves for the benefit of a vendor in an effort to maximize vendor profits, user profiles, which are used to identify products, promotions and pricing, are generated by tracking the behavior of shoppers. See, for example, paragraph [0005] et seq., paragraph [0028] et seq., paragraph [0112] et seq. and others. In contrast, the system according to several claims of the invention compile a user profile according to user-entered parameters. Since the system defined according to the claimed invention serves to maximize a benefit to the user, many of the parameters of a user profile are self-directed and ALL of the parameters are compiled by the user only and a vendor. The Herz system is rather premised on a vendor’s perspective as noted above, and thus consumer or shopper profiles do not include user-entered parameters.

With reference to the Office Action, the Examiner contends that the previously-submitted arguments relate to features not recited in the claims. The Examiner is missing the point. Since Herz operates from a vendor’s perspective, it’s methodology is entirely different from that of the claimed invention. The claimed system endeavors to locate/identify products and services that will most benefit the user based on a user profile. Herz’s repeated references to maximizing vendor profits directly contrasts this objective. As such, Herz lacks at least the claimed step of accessing a database of items available from product and service providers, and identifying relevant items according to the user profile, the relevant items being those that most benefit the

user. The Herz system does NOT in any manner identify items that most benefit the user; rather, the Herz system identifies items that will maximize vendor profits.

In this context, the Office Action contends that the claim limitation reciting that the relevant items are those that most benefit the user “does not add enhancement to a manipulative step or structural component implementing the specific function of not benefitting the vendor but only benefitting the consumer.” The Office Action further contends that “the added limitation qualifies ‘the items’ and not the manipulative steps of compiling the profile or identifying relevant items.” It is not entirely clear what is meant by these conclusions, but presumably it is the Examiner’s contention that this limitation in the claims is not being given any patentable weight. In contrast with this conclusion, however, claim 1 for example defines the manipulative step of identifying [items that most benefit the user] according to the user profile. The Examiner is requested to identify what provision of U.S. patent law supports the contention that this specifically claimed manipulative step or structural component can be ignored. To illustrate differences between Herz and the claimed invention in the context of this limitation, the Herz system may indeed identify items relevant to the user, but the Herz system would NOT identify items that most benefit the user. Rather, Herz would identify items relevant to the user that would maximize vendor profits. The manipulative step/structural component defined in the claims is clearly different from the Herz system, and Applicant submits that the limitation should not be ignored.

The Dunaway publication does not correct these deficiencies. In fact, Applicant respectfully submits that the Herz publication teaches away from any modification to include these features of the invention as such modifications would be in direct contrast with the express teachings and objectives of the Herz system.

Claim 1 recites that the relevant items identified according to the user profile are those that most benefit the user. This subject matter can be found in the specification at, for example, paragraphs [0004], [0009], [0031], [0032], and others. In contrast, as discussed above, the Herz system determines products, prices and promotions in a manner that “attempts to maximize the vendor’s profits.” It is clear that maximizing a vendor’s profits is not in the best interests of the consumer.

Additionally, claim 1 has been amended according to the Examiner’s suggestion in the Office Action and as discussed during the interview. In particular, claim 1 defines the step of compiling a user profile relating to desired consumer items, wherein only a user and not a vendor compiles the user profile. Support for this amendment can be found in the specification at, for example, paragraphs [0007] (“system provides the customer with the option of specifying criteria . . .”), [0009] (“identifying the lowest-cost option meeting the customer’s requirements . . .”), [0029] (“customer controls all decisions . . .”) and (“changes made in the interface when executed by the customer go into a customer profile”), [0031] (“optimizer 34 shows the customer which vendors and which plans provide the lowest cost for the service and usage parameters supplied by the customer and/or monitored [for the customer] by the system”), [0032] (“a least-cost package is determined . . . consistent with any specification of vendor or service made by the customer”), [0033] (“system notifies vendors of any changes . . . and also monitors implementation of changes to ensure that vendors are in compliance with [customer] service choices,” emphasizing the buyer perspective).

Applicant respectfully submits that the rejection of claim 1 should be withdrawn.

Dependent claim 3 further emphasizes this concept, reciting that the step of compiling a user profile is practiced according to user-entered parameters. In this context, the Office Action

references paragraph [0005] in the Herz publication. This paragraph, however, illustrates the distinction pointed out above as all parameters for the shopper profiles are obtained “by tracking the behavior of shoppers.” The Herz system does not in any manner receive user-entered parameters for defining the shopper profiles. Indeed, each of the points referenced in the Office Action, in paragraph [0005] of Herz, and throughout the Herz publication is obtained by some external source that tracks shopper behavior.

Claim 5 recites that in step (b), the relevant items are identified based on a lowest cost consistent with the user profile. In this context, the Office Action references paragraph [0036], describing a determination of shoppers’ goals and references a price limit for a particular product or a characteristic of “price sensitivity” based on past shopping behavior. Although these parameters relate peripherally to a specific product price, it is apparent that the system would not in any manner identify relevant items based on a lowest cost consistent with the user profile. Rather, the Herz system would identify such products that would appeal to a particular shopper while maximizing vendor profits. That is, knowing the shopper’s history, the Herz system will identify and promote products that fall in the shopper’s price range while still generating maximum profit for the vendor.

Independent claim 14 defines a method of obtaining and maintaining consumer items including products and services at a lowest available cost over a global network. Claim 14 defines a step of compiling a user profile according to a pattern of customer use and user-entered parameters. **From this step alone, it is clear that Applicant intends a different meaning for user-entered parameters that are specifically entered by the user and those parameters inferred as “user-entered” by a pattern of customer use.** The Examiner’s interpretation of “user-entered parameters” is thus too broad since such an interpretation would render the

language of claim 14 redundant. Moreover, claim 14 has been amended consistent with claim 1, providing that only a user and not a vendor compiles the user profile.

With regard to the Herz system, as discussed above, the Herz system does not in any manner compile a user profile according to user-entered parameters. In fact, the Herz system teaches away from any such application since it functions entirely from a vendor's perspective and solely determines the shopper profiles by past shopper behavior. As such, Applicant submits that the rejection of claim 14 is misplaced.

Claim 16 recites that the relevant items are identified based on a lowest cost consistent with the user profile. In this context, see the discussion above with regard to claim 5.

Claim 21 defines a computer system for administering consumer items where a user computer runs a computer program that identifies relevant items according to a user profile compiled with only user input, where the relevant items are those that most benefit the user. As discussed above, at least this subject matter is lacking in the Herz publication, and since the Herz publication teaches away from any modification to correct this deficiency, the combination of Herz and Dunaway similarly fails to render obvious this claimed subject matter. Applicant thus respectfully submits that the rejection of claim 21 should be withdrawn.

Claim 22 defines a computer program embodied on a computer-readable medium for administering consumer items. The computer program includes, among other things, means for compiling a user profile relating to a desired consumer item based at least on user-entered parameters, wherein only a user and not a vendor compiles the user profile. Since such parameters are lacking in the Herz publication and Herz in fact teaches away from including such parameters, Applicant submits that the rejection of claim 22 should also be withdrawn.

Reconsideration and withdrawal of the rejection are thus respectfully requested.

WHITEHEAD
Appl. No. 09/863,010
April 4, 2008

In view of the foregoing amendments and remarks, Applicant respectfully submits that the claims are patentable over the art of record and that the application is in condition for allowance. Should the Examiner believe that anything further is desirable in order to place the application in condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Prompt passage to issuance is earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: /Alan M. Kagen/
 Alan M. Kagen
 Reg. No. 36,178

AMK:jls
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100